



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-0983]

RIN 1625-AA00

Safety Zone; Power Line Replacement, West Bay, Panama City, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a portion of West Bay Creek and West Bay, to include all waters between the Highway 79 Fixed Bridge and the mouth of West Bay Creek out to buoy markers 27 and 28 of the Intracoastal Waterway. This action is necessary for the protection of vessels and persons on navigable waters during the replacement of overhead power lines. Entry into, transiting or anchoring in this zone is prohibited to all vessels and persons unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: Effective Date: this rule is effective in the CFR from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 11:59 p.m. December 31, 2011. This rule is effective with actual notice for purposes of enforcement beginning

12:01 a.m. November 14, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-0983 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0983 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex South Broad Street Mobile, AL 36615, between 8:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251-441-5940 or e-mail Lenell.J.Carson@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure

Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is insufficient time to publish a NPRM. The Coast Guard held a meeting with Gulf Coast Power Company on October 13, 2011 to discuss potential safety hazards associated with the their project to replace overhead power lines crossing the Intracoastal Waterway. The Coast Guard decided that it would be in the best interest for public safety to establish a temporary safety zone. Publishing a NPRM for this safety zone is impracticable because it would unnecessarily delay the required safety zone's effective date and would unnecessarily interfere with an ongoing power line enhancement project. The safety zone is needed to protect persons and vessels from safety hazards associated with the replacement of overhead power lines.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Following a safety meeting held on October 13, 2011 with Gulf Coast Power Company, to discuss potential safety

hazards associated with the their project to replace overhead power lines crossing the Intracoastal Waterway, the Coast Guard decided that a temporary safety zone would be in the best interest for public safety. Providing 30 day notice would be impracticable, and would unnecessarily interfere with an ongoing power line enhancement project. Any delay to affecting this safety zone would be impracticable because immediate action is needed to protect persons and vessels from safety hazards associated with the replacement of overhead power lines.

Basis and Purpose

Gulf Coast Power Company is replacing their 115 kilovolt power lines with new 230 kilovolt power lines to increase their power capacity in the West Bay area. The COTP Mobile is establishing a temporary safety zone for a portion of West Bay to protect persons and vessels during the replacement of the overhead power lines.

The COTP anticipates minimal impact on vessel traffic due to this regulation. However, this safety zone is deemed necessary for the protection of life and property within the COTP Mobile zone.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for a portion of West Bay Creek and West Bay, to include all waters between the Highway 79 Fixed Bridge and

the mouth of West Bay Creek out to buoy markers 27 and 28 of the Intracoastal Waterway. This temporary rule will protect the safety of life and property in this area. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated representative. The COTP may be contacted by telephone at 251-441-5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period and enforcement times for the safety zone. This rule is effective from November 14, 2011 through December 31, 2011. Enforcement times will be during daylight hours only and exact enforcement dates will be broadcasted via a Safety Broadcast Notice to Mariners.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

The temporary safety zone established in this rule will restrict vessel traffic from entering, transiting or anchoring in a small portion of West Bay Creek and West Bay, during the replacement of overhead power lines. The effect of this regulation will not be significant for several reasons: 1) This rule will only affect vessel traffic for a short duration; 2) vessels may request permission from the COTP to transit through the safety zone; and 3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through local notice to mariners and broadcast notice to mariners. These notifications will allow the public to plan operations around the affected area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in

their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in affected portions of West Bay Creek and West Bay, during the replacement of overhead power lines. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the

Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for

inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian

tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that

are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone to protect the public from dangers associated with power line replacement. An environmental analysis checklist and a categorical exclusion determination will be made available as directed under the ADDRESSES section.

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR PART 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS

AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0983 to read as follows:

§ 165.T08-0983 Safety Zone; Power Line Replacement, West Bay, Panama City, FL

(a) Location. The following area is a safety zone: a portion of West Bay Creek and West Bay, to include all waters between the Highway 79 Fixed Bridge and the mouth of West Bay Creek out to buoy markers 27 and 28 of the Intracoastal Waterway.

(b) Effective dates. This rule will be effective from November 14, 2011 through December 31, 2011. Enforcement times will be during daylight hours only and exact enforcement dates will be broadcasted via a Safety Broadcast Notice to Mariners.

(c) Regulations. (1) In accordance with the general regulations in 33 CFR part 165, subpart C, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Vessels desiring to enter into or passage through the

zone must request permission from the Captain of the Port Mobile or a designated representative. They may be contacted on VHF-FM channels 16 or by telephone at 251-441-5976.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) Informational Broadcasts: The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: November 10, 2011

D. J. ROSE,
Captain, U.S. Coast Guard
Captain of the Port Mobile

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Date: 12/06/2011]